

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BETSAIRA G.,)	
)	
Appellant,)	2 CA-JV 2008-0097
)	DEPARTMENT B
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY,)	Appellate Procedure
CHRISTOPHER G., and EDGARDO G.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18219500

Honorable Charles S. Sabalos, Judge

AFFIRMED

Sarah Michele Martin

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Appellant Betsaira G. appeals from the juvenile court's August 2008 order terminating her parental rights to Christopher, born in November 2006, and Edgardo, born in April 2003, on the grounds of neglect or abuse and length of time in care. *See* A.R.S. § 8-533(B)(2), (8)(b).¹ We affirm for the reasons stated below.

¶2 In a dependency petition filed in April 2007, the Arizona Department of Economic Security (ADES) alleged five-month-old Christopher was admitted to a hospital suffering from an acute right frontal subdural hematoma, two rib fractures, and bilateral retinal hemorrhages, with evidence of a second but older injury. ADES further alleged Betsaira had admitted having shaken Christopher and that both children had been treated on previous occasions for injuries that were suspicious and appeared to indicate physical abuse. The children were removed from Betsaira's custody and placed in foster care while ADES explored the possibility of placing them with a relative. The children were adjudicated dependent in May after Betsaira pled no contest to the allegations in the petition. Following a permanency hearing in April 2008, ADES filed a motion to terminate Betsaira's parental rights to Christopher and Edgardo based on her physical abuse of Christopher; ADES later amended the motion to add the allegation that the children had been out of the home pursuant to a court order for fifteen months or longer. After a two-day hearing, the juvenile court found termination of Betsaira's parental rights warranted on both grounds alleged in the motion.

¹Section 8-533(B)(8)(b), A.R.S., was recently renumbered as § 8-533(B)(8)(c). 2008 Ariz. Sess. Laws, ch. 198, § 2. In this decision, we will refer to the statute as numbered when the juvenile court entered the termination order.

¶3 We will not disturb a juvenile court’s order terminating a parent’s rights unless the order is clearly erroneous. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). On review, we view the evidence in the light most favorable to upholding the factual findings upon which the order is based. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). We will affirm the order as long as at least one statutory ground has been established by clear and convincing evidence. *Id.* ¶ 12.

¶4 Betsaira was charged with multiple counts of child abuse for the abuse of Christopher upon which the motion to terminate her parental rights is based. She was arrested in November 2007 and would have been released soon thereafter but for an immigration hold placed on her, pending trial on those charges. Betsaira argues that, because of her immigration status, she remained incarcerated and was unable to receive reunification services. She asserts that “[t]he court deprived [her] of Equal Protection and Due Process under the law when it terminated her parental rights based upon her inability to complete her case plan within the statutory time limits because of her immigration status.”

¶5 We need not address this argument because, as stated, we can affirm the court’s order as long as it is sustainable on any one ground. *See id.* Betsaira’s argument regarding her inability to comply with and complete the case plan within a specified period of time relates only to the termination of her parental rights pursuant to § 8-533(B)(8)(b). Similarly, her third argument in her opening brief—that there was insufficient evidence to support the court’s dual finding that ADES had offered her appropriate reunification services and that

she would not be able to exercise proper and effective parental care and control in the near future—relates only to elements of § 8-533(B)(8)(b), not § 8-533(B)(2). And, apart from challenging the juvenile court’s finding that severance was in the children’s best interests, discussed below, Betsaira does not challenge the termination of her rights pursuant to § 8-533(B)(2). Nor need we address the argument raised for the first time in her reply brief that there exists, as to all statutory grounds for terminating a parent’s rights, a constitutionally based requirement that the parent be provided with reasonable reunification services and an opportunity to benefit from those services and complete a given case plan. *See In re Guardianship of Pacheco*, ___ Ariz. ___, n.6, 199 P.3d 676, 681 n.6 (App. 2008) (court need not reach issue first raised in reply brief).

¶6 Betsaira’s challenge to the juvenile court’s finding that terminating her parental rights was in the children’s best interests is intertwined with her argument that the court erred by not placing the children with a relative. First, because Betsaira’s parental rights have been terminated, she lacks standing to object to the children’s placement. *See Sands v. Sands*, 157 Ariz. 322, 324, 757 P.2d 126, 128 (App. 1988) (once order severing parental rights issued, “father’s standing as a parent terminated”). Similarly, she lacks standing to claim the court violated A.R.S. § 8-514, which “provides the juvenile court with the legislature’s preference for where or with whom a child is placed but . . . does not mandate that the order of preference be strictly followed when a placement is not consistent with the needs of the child.” *Antonio P. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 402, ¶ 12, 187 P.3d 1115, 1118 (App. 2008). Additionally, the record makes clear that, throughout the dependency

proceeding, ADES had been exploring the possibility of placing the children with a relative, and the termination order did not extinguish that future possibility. Moreover, Betsaira had not challenged the placement orders entered in the dependency proceeding when she had the opportunity to do so. *See In re Maricopa County Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994) (“[O]rders arising from periodic review of dependency placement arrangements are appealable.”); *see also In re Yavapai County Juv. Action No. J-8545*, 140 Ariz. 10, 14, 680 P.2d 146, 150 (1984) (order entered after each dependency review appealable).

¶7 As to the finding of best interests, the juvenile court only needed to find that a preponderance of the evidence established termination of Betsaira’s rights was in the children’s best interests, *see Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 22, 110 P.3d 1013, 1018 (2005), and there was more than reasonable evidence to support the court’s finding. Evidence that a child will derive “an affirmative benefit from termination” is sufficient, and “[t]he existence of a current adoptive plan is one well-recognized example of such a benefit.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004). A specific plan of adoption is not required; the court may rely on evidence that the child is adoptable and that the existing placement is meeting the child’s needs. *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994). The court is “not required to rule out possible placements with biological relatives before considering other placements. Nor does the juvenile court weigh alternative placement

possibilities to determine which might be better.” *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶8 The evidence established that Betsaira had physically abused Christopher, inflicting serious injuries. Although she invoked the protection of the Fifth Amendment of the United States Constitution during the severance hearing, as the court noted and Betsaira’s counsel agreed, the court could infer from her refusal to testify that she had “abuse[d] or neglect[ed] the children.” Other evidence supported that finding as well, including the testimony of the psychologist who had evaluated Betsaira. According to the psychologist, Betsaira had made statements about having shaken Christopher more than once in two days and having grabbed him to put him into a car seat.

¶9 Betsaira admitted at the hearing that she had read reports about Christopher, stating that it would “take a little bit longer for his development to grow because of the injury . . . I guess—he had a problem with his eye and he’s doing a lot better,” although she agreed his vision had been affected. The unquestionable severity of Christopher’s injuries was amply established by the testimony of pediatric neurologist John Gray, who had examined Christopher at the hospital in April 2007 and three times since then. As Gray explained, there was evidence of “subdural hemorrhages that were thought to be of multiple ages.” Christopher was experiencing seizures; “had had an ophthalmology examination, which reportedly demonstrated retinal hemorrhages; and . . . he had a skeletal survey that showed call[us] formation of his right femur and fractures of two ribs,” all of which led Gray to believe “that this was potentially consistent with a nonaccidental trauma.” Gray explained

there was evidence of cerebral atrophy and, if that were ongoing, “potentially there could be neurological or neurodevelopmental sequelae.” He added, “The type and degree [are] impossible for me to say.”

¶10 Betsaira’s conduct resulted in a criminal prosecution, and her criminal trial was scheduled to take place in November 2008, following the severance hearing in August. The combination of Betsaira’s illegal immigration status and her criminal prosecution left her incarcerated and unable to care for her children. She agreed at the hearing that the children needed a “permanent home” and that she would “not necessarily . . . be available to be there [for them].” The case manager testified it was not known how long Betsaira would remain incarcerated. But, she added, termination of Betsaira’s rights was in the children’s best interests because of this uncertainty. She suggested the children needed permanency and stated their foster placement was appropriate. The children were together in the same foster home at the time of the hearing, and the foster parents had expressed a willingness to adopt them. The foster parents were meeting the children’s needs, including Christopher’s special medical needs. And the psychologist who had evaluated Betsaira testified that, based on the severity of Betsaira’s multiple mental health issues, she was concerned “that young children in her care would continue to be at risk of physical harm.” Even with the proper reunification services, it could “take years” for Betsaira to resolve the “multiple serious issues” from which she suffered.

¶11 ADES is correct that Betsaira’s argument based on A.R.S. § 8-536 is misplaced. That statute, which requires preparation of a social study, applies when

termination is sought by a petition, not when ADES files a motion for termination at the direction of the juvenile court within the context of an ongoing dependency action. *See* § 8-536(A); *see also* A.R.S. § 8-532(C) (statutes, including § 8-536, governing proceedings to terminate parent-child relationship do not apply to termination proceedings following permanency determination conducted pursuant to chapter 10, article 4, title 8).

¶12 For the reasons stated, we affirm the juvenile court's order terminating Betsaira's parental rights to Christopher and Edgardo.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge